

APR 14 2008



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MUELLER & LARSON, P.C.**  
AN INTERNATIONAL INTELLECTUAL PROPERTY LAW FIRM

FAX TRANSMISSION April 14, 2008

TO: Mail Stop: AMENDMENT  
Examiner: LAGMAN  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

FROM: Curtis B. Hamre

OUR REF: 20037.1003USWO

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Title of Document: **COMMUNICATION (12 pages)**

Applicant: BLASCHKE  
Serial No.: 10/574295  
App. Filed: March 31, 2006  
Group Art No.: 3672

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By: Curtis B. Hamre  
Name: Curtis B. Hamre  
Reg. No.: 29,165

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Tracy Kimmel

Signature

Date

April 14, 2008

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APR 14 2008

S/N 10/574295

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	BLASCHKE	Examiner:	LAGMAN
Serial No.:	10/574295	Group Art Unit:	3672
Filed:	March 31, 2006	Docket No.:	20037.1003USWO
Title:	FIXING DEVICE		

CERTIFICATE UNDER 37 CFR 1.6(d):

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on April 14, 2008.

By:   
Name: Tracy Kimme

Mail Stop: AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

COMMUNICATION

Dear Sirs:

Please enter the following English Translation of the Written Opinion of the International Searching Authority into the file history.

Any questions regarding this communication can be directed to the undersigned attorney, Curtis B. Hamre, Reg. 29,165, at (612)455-3802.

Respectfully submitted,

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By: 

Curtis B. Hamre  
Reg. No. 29,165  
CBH/tk

**52835**

PATENT TRADEMARK OFFICE

Dated: April 14, 2008

## PATENT COOPERATION TREATY

## PCT

RECEIVED  
CENTRAL FAX CENTERINTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY  
(Chapter I of the Patent Cooperation Treaty)

APR 14 2008

(PCT Rule 44bis)

Applicant's or agent's file reference M/ACO-297-PC	FOR FURTHER ACTION		See item 4 below
International application No. PCT/EP2004/011053	International filing date (day/month/year) 04 October 2004 (04.10.2004)	Priority date (day/month/year) 07 October 2003 (07.10.2003)	
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237			
Applicant ACO SEVERIN AHLMANN GMBH & CO. KG			

- This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).
- This REPORT consists of a total of 11 sheets, including this cover sheet.  
  
In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.
- This report contains indications relating to the following items:
 

<input checked="" type="checkbox"/> Box No. I	Basis of the report
<input checked="" type="checkbox"/> Box No. II	Priority
<input type="checkbox"/> Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/> Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/> Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/> Box No. VI	Certain documents cited
<input checked="" type="checkbox"/> Box No. VII	Certain defects in the international application
<input checked="" type="checkbox"/> Box No. VIII	Certain observations on the international application
- The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis.2).

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland  Facsimile No. +41 22 338 82 70	Date of issuance of this report 27 July 2006 (27.07.2006)
	Authorized officer  Agnes Wittmann-Regis  e-mail: pt06@wipo.int

Form PCT/IB/373 (January 2004)

APR 14 2008

## PATENT COOPERATION TREATY

Translation

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

PCT

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing (day/month/year)		See Form PCT/ISA/210 (sheet 2)
Applicant's or agent's file reference <b>M/ACO-297-PC</b>		FOR FURTHER ACTION See paragraph 2 below
International application No. <b>PCT/EP2004/011053</b>	International filing date (day/month/year) <b>04.10.2004</b>	Priority date (day/month/year) <b>07.10.2003</b>
International Patent Classification (IPC) or both national classification and IPC <b>E03F5/06</b>		
Applicant <b>ACO SEVERIN AHLMANN GMBH &amp; CO. KG</b>		

## 1. This opinion contains indications relating to the following items:

- |                                     |              |  |
|-------------------------------------|--------------|--|
| <input checked="" type="checkbox"/> | Box No. I    | Basis of the opinion   |
| <input checked="" type="checkbox"/> | Box No. II   | Priority   |
| <input type="checkbox"/>            | Box No. III  | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability   |
| <input type="checkbox"/>            | Box No. IV   | Lack of unity of invention   |
| <input checked="" type="checkbox"/> | Box No. V    | Reasoned statement under Rule 43bis.1(a)(1) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/>            | Box No. VI   | Certain documents cited  |
| <input checked="" type="checkbox"/> | Box No. VII  | Certain defects in the international application   |
| <input checked="" type="checkbox"/> | Box No. VIII | Certain observations on the international application  |

## 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 60.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

## 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/IEP	Authorized officer
Facsimile No.	Telephone No.

Form PCT/ISA/237 (cover sheet) (January 2004)

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/011053

Box No. I

Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_ which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
- a. type of material
- ☐ a sequence listing
- ☐ table(s) related to the sequence listing
- b. format of material
- ☐ in written format
- ☐ in computer readable form
- c. time of filing/furnishing
- ☐ contained in the international application as filed.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/011053

Box No. II

Priority

1. ☒ The following document has not yet been furnished:
- ☒ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
  - ☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).
- Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

Form PCT/ISA/237 (Box No. II) (January 2004)

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY		International application No. PCT/EP2004/011053
Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability: citations and explanations supporting such statement	
<b>1. Statement</b>		
Novelty (N)	Claims <u>1-19</u>	YES
	Claims _____	NO
Inventive step (IS)	Claims <u>19</u>	YES
	Claims <u>1-18</u>	NO
Industrial applicability (IA)	Claims <u>1-19</u>	YES
	Claims _____	NO
<b>2. Citations and explanations:</b>		
<p>This opinion makes reference to the following search report citations; the same numbering will be used throughout the procedure:</p> <p style="margin-left: 40px;">D1: DE 44 47 121 A</p> <p style="margin-left: 40px;">D2: DE 82 23 404 U</p> <p style="margin-left: 40px;">D3: DE 102 38 738 C</p> <p style="margin-left: 40px;">D4: EP-A-0 856 610</p> <p>1. The present application does not meet the requirements of PCT Article 33(1) because the subject matter of independent claim 1 does not involve an inventive step within the meaning of PCT Article 33(3).</p> <p>1.1 Document D1 is considered to be the closest prior art in relation to the subject matter of claim 1. It discloses in figure 8 (the references between parentheses refer to this document) an arrangement consisting of a channel body 11 of a drainage channel, a road or river gully or similar surface drainage means, of a cover 15 and of a fastening</p>		

Form PCT/ISA/237 (Box No. V) (January 2004)

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/011053

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

device.

The fastening device makes it possible to attach a cover to an upper edge of the channel body, gully box or similar body that can be embedded in the ground. The fastening device comprises first fastening elements 16, 16' on the cover and second fastening elements (metal border 13, 13' with retaining elements 50, 50') on the channel body that can be embedded in the ground, it being possible for the first fastening elements and the second fastening elements to be brought respectively into snap-fitting engagement with one another in order to retain the cover on the channel body.

- 1.2 The subject matter of claim 1 therefore differs from the arrangement known from D1 in that the first fastening elements and/or the second fastening elements each have at least one damping section with a contact surface between the cover and the channel body that can be embedded in the ground, with the result that the secured cover is situated at a distance from the upper edge of the channel body. The problem addressed by the present invention can therefore be considered that of preventing the cover on the channel body from rattling when a vehicle travels over it.

- 1.3 However, the solution proposed in claim 1 of the present application cannot be considered to be inventive, since document D2 suggests mounting such an elastic section: arranged between the contact surfaces of the cover 2 and the base body 1 are

Form PCT/ISA/237 (Box No. V) (January 2004)

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/011053

Box No. V

Reasoned statement under Rule 43bis 1(a)(i) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

damping rings 9, 10 which are used to prevent rattling noises (see second paragraph on page 3).

1.4 A person skilled in the art would therefore apply the teaching of document D2 to the arrangement known from D1 and thereby obtain the subject matter of claim 1 without being inventive.

2. The features in dependent claims 2-18 concern simple structural configurations of the claimed subject matter which can obviously not be assigned any patent-justifying significance, since a person skilled in the art would provide them as required at his own discretion on the basis of his expert knowledge, providing they are not known to him anyway through the prior art or at least rendered obvious (see documents D1-D4).

Therefore, even the combination of the features from these claims with those from the independent claim would only lead to subject matter not involving an inventive step (PCT Article 33(3)).

3. The combination of features which is contained in dependent claim 19 is neither known from nor suggested by the available prior art.

The opening in the second fastening element makes it possible when inserting the first fastening element to expel any contamination in the second fastening element. Consequently, the cover can always be exactly seated on the channel body.

The subject matter of dependent claim 19 therefore meets the PCT requirements for novelty and inventive

Form PCT/ISA/237 (Box No. V) (January 2004)

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/011053

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability:  
citations and explanations supporting such statement

step.

4. The subject matter of claims 1-19 is industrially applicable.

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/011053

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

1. Pursuant to PCT Rule 5.1(a)(ii), the description should have cited documents D1, D2 and D4 and specified the relevant prior art disclosed therein.
2. The wording of the last paragraph on page 19 of the description gives the impression that the scope of protection is not intended to be limited only to the scope defined in the claims but to go beyond it. This is not permissible under PCT Guidelines III-4.3a, and the paragraph should therefore have been deleted.
3. A German utility model is cited on page 2 of the description, but the incorrect publication number has been used. The correct publication number should be "DE 202 00 509 U".

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/011053

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. The application does not meet the requirements of PCT Article 6 because claims 1, 3, 13, 14 and 16 are not clear.

1.1 The scope of protection for independent claim 1 cannot be determined unequivocally since it is unclear what components are part of the claimed fastening device. It is particularly unclear whether the cover and the channel body are supposed to be part of the device, since they are used for the definition of the first and second fastening elements (for example "with first fastening elements on the cover" instead of "with first fastening elements which can be mounted on the cover"; see also subclaim 4) but are actually not part of the fastening device.

1.2 Moreover, the claimed fastening device is defined throughout the set of claims with reference to the cover and the channel body (for example "with the result that the secured cover is situated at a distance from the upper edge of the (channel) body").

Therefore, the claimed subject matter would likewise change when using different covers and channel bodies, resulting in a lack of clarity in the definition of the claimed fastening device.

It would therefore appear essential to claim an arrangement consisting of a channel body, cover and

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/011053

Box No. VIII Certain observations on the international application

fastening device. The fastening device per se cannot be sufficiently clearly defined. Moreover, the invention lies in the cover and channel body being situated at a distance from one another and not in the snap-fitting connection of the two fastening elements.

1.3 The reference back to claim 2 in claim 3 is unclear since claims 2 and 3 contradict one another. The protrusion-forming damping section according to claim 1 is arranged either on the first or on the second fastening element. The "and" alternative in claim 1 would only make sense if at least two different damping sections are present, although this cannot be discerned from the wording used in claims 2 and 3: "the damping section".

1.4 The expression used in claims 13 and 14: "the at least one lug-like projection", is unclear since a number of such projections have been mentioned previously (claims 7, 11 and 12).

1.5 The expression used in claim 16: "bottom of the cavity" (line 5), is unclear since such a cavity has not been introduced previously when the claim refers back to claim 1. A cavity is mentioned for the first time in claim 8.